



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA-HQ-OAR-2013-0600; FRL-9906-75-OAR]

RIN 2060-AR89

Protection of Stratospheric Ozone: Updates to HCFC Trade Language as Applied to Article 5 Countries; Ratification Status of Parties to the Montreal Protocol; and Harmonized Tariff Schedule Commodity Codes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final Rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing this direct final rule to update: regulations governing trade of HCFCs to reflect that HCFC control measures have now taken effect for Parties operating under Article 5 of the Montreal Protocol; references to Party ratification status; commodity codes for ozone depleting substances to address changes made in 2012 by the U.S. International Trade Commission; and other minor provisions. We are making these revisions to ensure that EPA regulations are consistent with the United States obligations under Montreal Protocol and the Clean Air Act, to ensure that companies importing ozone-depleting substances refer to accurate commodity codes, and to streamline and clarify regulatory content.

DATES: This direct final rule is effective on **[INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]** without further notice, unless EPA receives adverse comment by **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE**

FEDERAL REGISTER]. If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. **EPA-HQ-OAR-2013-0600**, by one of the following methods:

- www.regulations.gov: Follow the online instructions for submitting comments.
- Email: a-and-r-docket@epa.gov
- Mail: Docket # EPA-HQ-OAR-2013-0600, Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mail code: 6102T, 1200 Pennsylvania Avenue NW, Washington, DC 20460
- Hand Delivery: Docket #EPA-HQ-OAR-2013-0600 Air and Radiation Docket at EPA West, 1301 Constitution Avenue NW, Room B108, Mail Code 6102T, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. **EPA-HQ-OAR-2013-0600**. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. If you want to submit confidential comments, please send them to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without

going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at www.epa.gov/epahome/dockets.htm.

FOR FURTHER INFORMATION CONTACT: Jeremy Arling by telephone at (202) 343-9055 or by email at arling.jeremy@epa.gov, or by mail at U.S. Environmental Protection Agency, Stratospheric Protection Division, Stratospheric Program Implementation Branch (6205J), 1200 Pennsylvania Ave, NW, Washington DC, 20460. You may also visit the Ozone Protection website of EPA's Stratospheric Protection Division at www.epa.gov/ozone/strathome.html for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion and related topics.

SUPPLEMENTARY INFORMATION: The Montreal Protocol bans trade with any country that has not agreed to be bound by the control measures in effect for that substance, unless the country meets certain requirements that will be discussed later in this preamble. As of January 1, 2013, Parties operating under Article 5 paragraph 1 of the Montreal Protocol (Article 5 countries) are subject to a freeze on production and consumption of HCFCs. In this action, EPA is bringing its stratospheric ozone protection regulations up to date to indicate that the existing trade provisions now apply to Article 5 countries. This document provides current information

on the ratification¹ status of Article 5 countries. This action is necessary to ensure that our regulations conform to United States obligations as a Party to the Montreal Protocol and with the requirements of Title VI of the Clean Air Act.

The U.S. International Trade Commission is responsible for publishing the Harmonized Tariff Schedule of the United States (HTS). The HTS provides the applicable tariff rates and statistical categories for all merchandise imported into the United States. It is based on the international Harmonized System, the global system of nomenclature that is used to describe most world trade in goods. Revisions made in 2012 affected the commodity codes (also known as HTS codes) for ozone depleting substances. This action updates the commodity codes in our regulations so that they coincide with the ones currently in effect and in use by the U.S. International Trade Commission.

EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the “Proposed Rules” section of today’s **Federal Register**, we are publishing a separate document that will serve as the proposed rule for the revisions discussed in this action if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any stakeholders interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

¹ In this document, we use “ratification” to mean the deposit of an instrument of ratification, acceptance, or approval.

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

CAA – Clean Air Act

CAAA – Clean Air Act Amendments of 1990

CFC – Chlorofluorocarbon

CFR – Code of Federal Regulations

EPA – Environmental Protection Agency

FR – Federal Register

HCFC – Hydrochlorofluorocarbon

HTS – Harmonized Tariff Schedule

Montreal Protocol – *Montreal Protocol on Substances that Deplete the Ozone Layer*

MOP – Meeting of the Parties

MT – Metric Ton

ODP – Ozone Depletion Potential

ODS – Ozone-Depleting Substance(s)

Party – Nations and regional economic integration organizations that have consented to be bound by the *Montreal Protocol on Substances that Deplete the Ozone Layer*

Table of Contents

- I. General Information
 - A. Does This Action Apply to Me?
 - B. What Should I Consider as I Prepare My Comments for EPA?
 - 1. Confidential Business Information (CBI)
 - 2. Tips for Preparing Your Comments
- II. Update to regulations concerning HCFC trade restrictions for Article 5 countries
 - A. What does the Montreal Protocol say about trade restrictions?
 - B. What do the Clean Air Act and EPA’s regulations say about trade restrictions?
 - C. Today’s Action
- III. Remove Appendix C listing ratification status of Parties and remove references to Appendix C

- A. Removing Appendix C to Subpart A of Part 82
- B. Revising definitions found in 40 CFR 82.3 referring to Appendix C
- C. Removing references to Appendix C found in 40 CFR 82.4
- D. Removing references to Appendix C found in 40 CFR 82.15
- E. Removing references to Appendix C found in 40 CFR 82.18
- IV. Updating Appendix E
- V. Updating commodity codes for ozone-depleting substances
- VI. Statutory and Executive Order Reviews
 - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
 - B. Paperwork Reduction Act
 - C. Regulatory Flexibility Act
 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
 - H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
 - I. National Technology Transfer and Advancement Act
 - J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
 - K. Congressional Review Act

I. General Information

A. Does This Action Apply to Me?

This rule will affect the following categories: Industrial Gas Manufacturing entities (NAICS code 325120), including fluorinated hydrocarbon gas manufacturers and importers; Other Chemical and Allied Products Merchant Wholesalers (NAICS code 424690), including chemical gases and compressed gases merchant importers; refrigerant reclaimers, manufacturers of recovery/recycling equipment; and refrigerant recovery/recycling equipment testing organizations, including such entities that might import virgin, recovered, or reclaimed gas.

This list is not intended to be exhaustive, but rather provides a guide for readers regarding the types of entities that could potentially be regulated by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, business

organization, or other entity is regulated by this action, you should carefully examine these regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the “**FOR FURTHER INFORMATION CONTACT**” section.

B. What Should I Consider as I Prepare My Comments for EPA?

1. Confidential Business Information (CBI)

Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date, and page number).
- Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in

sufficient detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Update to regulations concerning HCFC trade restrictions for Article 5 countries

A. What does the Montreal Protocol say about trade restrictions?

The *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol) is the international agreement aimed at reducing and eventually eliminating the production and consumption of stratospheric ozone-depleting substances (ODS). The United States was one of the original signatories to the 1987 Montreal Protocol and the United States ratified the Protocol in 1988. Congress then enacted, and President George H.W. Bush signed into law, the Clean Air Act Amendments of 1990 (CAAA), which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, Subchapter VI, to ensure that the United States could satisfy its obligations under the Montreal Protocol.

The 1990 London Amendment to the Montreal Protocol identified HCFCs as transitional substances to serve as temporary, lower ozone-depletion potential (ODP) substitutes for chlorofluorocarbons (CFCs) and other more destructive ODS. The Parties agreed in the 1992 Copenhagen Amendment to the Montreal Protocol to phase out HCFCs, beginning with a cap on consumption for developed countries (also referred to as Article 2 countries). Countries operating under Article 5 of the Montreal Protocol (also referred to as Article 5 countries or developing nations) were entitled to delay instituting control measures for ten years. While the 1992 Copenhagen Amendment did not cap HCFC production, the Parties did establish a cap on production and added trade restrictions through the Beijing Amendment agreed upon in 1999 at

the 11th Meeting of the Parties. The same ten-year delay in instituting control measures was applied to Article 5 countries. In 2007, at the 19th Meeting of the Parties in Montreal, Canada, the Parties agreed to more aggressively phase out HCFCs and accelerate the freeze on their production and consumption of HCFCs in Article 5 countries by three years, such that it would take effect January 1, 2013, instead of January 1, 2016.

Article 4 of the Montreal Protocol governs control of trade with non-Parties. Parties to the Beijing Amendment agreed, under paragraphs 1 quin. and 2 quin. of Article 4 of the Protocol, beginning in January 1, 2004, to ban HCFC imports from and exports to “any State not party to this Protocol.” Paragraph 9 of Article 4 of the Protocol indicates that the term “State not party to this Protocol” shall include, with respect to a particular controlled substance, a State or regional economic integration organization that has not agreed to be bound by the control measures in effect for that substance. Paragraph 8 of Article 4 provides an exception to the trade ban if “that State is determined, by a meeting of the Parties, to be in full compliance with Article 2, Articles 2A to 2I [the control measures] and this Article, and have submitted data to that effect as specified in Article 7.”

As a result of the acceleration of the HCFC commitments made in 2007 at the 19th Meeting of the Parties, HCFC control measures came into effect for Article 5 countries January 1, 2013. Therefore, under Article 4 of the Montreal Protocol, trade is prohibited between any Party to the Beijing Amendment and any Article 5 country that has not ratified the Beijing Amendment, unless the Article 5 country meets the exception contained in Article 4 paragraph 8.² The United States is a Party to the Beijing Amendment and therefore must comply with this

² Currently, four Article 5 countries have not ratified the Beijing Amendment: Kazakhstan, Libya, Mauritania, and Saudi Arabia. None of these countries has been determined to be in compliance with the Beijing Amendment pursuant to Article 4 paragraph 8.

trade prohibition. The purpose of this direct final rule is to update the EPA's regulations on trade in HCFCs to reflect their application to Article 5 countries.

B. What do the Clean Air Act and EPA's regulations say about trade restrictions?

Section 614(b) of the Clean Air Act, as amended, clarifies and confirms the authority and responsibility of the EPA Administrator to implement the United States' obligations under the Montreal Protocol, specifically addressing the Administrator's authority to implement the Protocol's trade provisions. As a conflict of laws provision, section 614(b) provides in relevant part that in the case of conflict between any provision of the Clean Air Act and any provision of the Montreal Protocol, the more stringent provision shall govern. In addition, that subsection indicates that nothing in Title VI of the Act shall detract from the Administrator's authority to implement the Article 4 trade restrictions. Thus, section 614(b) implicitly assumes that the agency has the authority to implement the trade provisions of the Protocol.

Implementation of the Protocol's HCFC trade provisions through EPA regulations helps safeguard the ozone layer. By preventing trade with foreign states that are not party to or do not comply with the HCFC control measures, these provisions help prevent HCFC production and consumption that does not take place under the Protocol's phaseout regime. Ultimately, these trade restrictions under the Protocol safeguard against trade undermining the production, consumption, and phaseout regime contemplated by both the Clean Air Act and the Montreal Protocol.

To implement the HCFC provisions of the Montreal Protocol, EPA established an allowance system to control the U.S. consumption of HCFCs and published the implementing regulations in the **Federal Register** on January 21, 2003 (68 FR 2820). The HCFC allowance system is part of EPA's Clean Air Act program to phase out ozone-depleting substances to

protect the stratospheric ozone layer. Protection of the stratospheric ozone layer helps reduce rates of skin cancer and cataracts, as well as other health and ecological effects. The U.S. is obligated under the Montreal Protocol to limit HCFC consumption and production to a specific level and, using stepwise reductions, to decrease the specific level culminating in a complete HCFC phaseout in 2030.

EPA's regulations also include provisions at 40 CFR 82.15(e) to implement the ban on trade with countries not Party to the Protocol. The EPA adopted section 82.15(e)(3) as currently drafted in 2004, at a time when the HCFC control measures for Article 5 countries were still well in the future. This provision reflected the Parties' 2003 agreement in Decision XV/3 that "*State not party to this Protocol*" in Article 4, paragraph 9 *does not apply to those States operating under Article 5, paragraph 1, of the Protocol until January 1, 2016 when, in accordance with the Copenhagen and Beijing Amendments, hydrochlorofluorocarbon production and consumption control measures will be in effect for States that operate under Article 5, paragraph 1, of the Protocol.*" At that time, January 1, 2016, was the date on which the first control measure for Article 5 countries, a production and consumption freeze, was to go into effect. Under the 1997 Montreal Amendment, Article 5 countries became subject to a consumption and production freeze on January 1, 2016 (Art. 5 para. 8 ter). In 2007, the Parties adopted Decision XIX/6, which replaced the reference to 2016 in Decision XV/9 with the new freeze date, 2013.

The regulatory trade provisions concerning HCFCs are now outdated in several respects. Section 82.15(e)(3), which describes the past status of Article 5 countries, is now obsolete because Article 5 countries are currently subject to HCFC control measures. Furthermore, section 82.15(e)(2) refers to a specific procedure associated with a March 2004 deadline. In

addition, the various Appendix C annexes referenced in section 82.15(e) have not been updated since 2004.

C. Today's Action

This rule updates section 82.15(e) to reflect that the trade ban applies to Article 5 countries not party to the HCFC control measures except to the extent that the Article 5 country is complying with the Beijing Amendment as provided in Article 4, paragraph 8 of the Montreal Protocol. Because all Parties are now subject to HCFC control measures, there is no longer any need to have a separate regulatory provision for Article 5 countries. The revised language applies to both Article 5 and non-Article 5 countries. In addition, EPA is removing from section 82.15(e)(2) the reference to a specific process and instead using the defined term “foreign state complying with,” which is discussed in Section III.B of this notice. EPA is also removing the references to Appendix C, as discussed in Section III of this notice, and advises readers to consult the Ozone Secretariat’s website for updates regarding the status of specific countries.

III. Remove Appendix C listing ratification status of Parties and remove references to Appendix C

Today’s action removes Appendix C of Subpart A, which contains lists of Parties to the Montreal Protocol and their ratification status, because the information is outdated and in part duplicative of other Appendices. This rule also updates several regulatory provisions to remove references to Appendix C.

A. Removing Appendix C to Subpart A of Part 82

This action removes Appendix C to Subpart A of Part 82 in its entirety. This appendix contains information on Parties to the Montreal Protocol, and nations complying with, but not Parties to, the Protocol. It consists of four Annexes: 1) Parties to the Montreal Protocol (as of January 29, 2003); 2) Nations Complying with, But Not Parties to, the Protocol; 3) Nations that

are Parties to the Montreal Protocol that have not yet Ratified all applicable Amendments to the Protocol but have Notified the Ozone Secretariat and Properly Submitted Supporting Documentation in Accordance with the Requirements of Decision XV/3; and 4) Nations That Are Parties to the Montreal Protocol and Are Operating Under Article 5(1).

Annex 1 contains a detailed matrix that lists Parties to the Montreal Protocol along with information on whether they had ratified specific amendments as of January 29, 2003. For updates to ratification status, Annex 1 currently refers to the Montreal Protocol Ozone Secretariat's website at: <http://www.unep.org/ozone/ratif.shtml>. EPA is no longer going to attempt to maintain the ratification status of Parties to the Protocol in our regulations. Ratification status can easily become outdated and updates to the regulations to reflect such changes are resource intensive and may be untimely. Furthermore, the public is increasingly relying on the Internet to find information. EPA believes that pointing readers to the Ozone Secretariat's website and removing Annex 1 of Appendix C will ensure that the public is using the most accurate and current information.

Annex 2 currently contains no information, but rather, is reserved to capture any and all "Nations Complying with, But Not Party to, the Protocol." The same rationale for removing Annex 1 applies to Annex 2. This rule removes Annex 2 and updates our regulations to advise readers to consult the Ozone Secretariat's website for Parties' ratification status as well as identification of any country that is in compliance with, but not party to, the Montreal Protocol.

Annex 3 contains a matrix detailing information that has become obsolete. Specifically, Annex 3 details information regarding any State not operating under Article 5, that at the time of publication, had not ratified the Copenhagen and/or the Beijing Amendment, but had followed procedures set forth in Decision XV/3 to implement the exception in Article 4, Paragraph 8. As

explained above, EPA has decided against attempting to maintain current ratification or compliance status in our regulations. For this reason, this rule removes Annex 3 of Subpart A of Part 82.

Annex 4 contains a list of countries operating under Article 5 of the Montreal Protocol. Appendix E of Subpart A also lists Article 5 countries and EPA sees no reason to maintain both. Therefore, this rule removes Annex 4 of Appendix C and updates Appendix E.

B. Revising definitions found in 40 CFR 82.3 referring to Appendix C

Section 82.3 contains definitions for Subpart A. Several of those definitions contain references to Appendix C. EPA is amending those definitions by removing those references and advising readers to consult the Ozone Secretariat's website. This rule also updates those definitions, as necessary, to include references to the Beijing Amendment.

Foreign state complying with. EPA is adding a definition for "Foreign state complying with." This replaces the definition of "Complying with the Protocol," which is being removed from the list of definitions. The new definition uses phrasing more consistent with the existing definition of "Foreign state not Party to or Non-Party." This new definition is similar to the old definition of "Complying with the Protocol" but adds a reference to the Beijing Amendment and removes the reference to appendix C.

Complying with the Protocol. As mentioned above, EPA is removing this definition from section 82.3.

Nations complying with, but not joining, the Protocol. This definition is simply a reference to Appendix C, annex 2. EPA is therefore removing this definition.

Foreign state not Party to or Non-Party. This rule adds the Beijing Amendment to the list of amendments referenced in this definition.

Party. EPA is revising this definition to remove the reference to Appendix C and to advise readers to consult the Ozone Secretariat's website for ratification status. EPA is also revising the wording to be consistent with the wording for the definition of "Foreign state not Party to or Non-Party."

C. Removing references to Appendix C found in 40 CFR 82.4

Section 82.4 contains prohibitions for class I controlled substances. Several of the class I prohibitions refer to Annex 1 of Appendix C (Parties to the Montreal Protocol) and Annex 2 of Appendix C (Nations complying with, but not Party to the Protocol). Generally, the class I regulations prohibit trade of class I controlled substances with foreign states unless that foreign state is a Party to the relevant control measures (as noted in Appendix C, Annex 1) or has been found in compliance with them (as noted in Appendix C, Annex 2). The ratification status listed in Annex 1 of Appendix C is outdated. Furthermore, there are no Parties listed in Annex 2 of Appendix C. While class I ozone-depleting substances are completely phased out and production and import are allowed only under limited exceptions, EPA does not want to maintain references to Appendix C when that Appendix is being removed in today's action.

EPA is revising section 82.4(l) paragraphs (1) through (6) to remove the references to Appendix C and to advise readers to consult the Ozone Secretariat's website.

D. Removing references to Appendix C found in 40 CFR 82.15

Section 82.15 contains prohibitions for class II controlled substances. Certain provisions in section 82.15 refer to Appendix C. As explained above, Appendix C is being removed through this action.

EPA is revising section 82.15(c) "Production with Article 5 Allowances" to change the reference therein from "Annex 4 of Appendix C" to "Appendix E." As revised through this

action, Appendix E contains the current list of Article 5 Parties and advises readers to consult the Ozone Secretariat's website for updates.

Section 82.15(e)(1), (2), and (3), which are provisions related to trade with foreign states, refer to Appendix C. This rule revises the section 82.15(e) trade provisions for the reasons discussed in Section II. EPA notes here that this revision also removes the references to Appendix C.

E. Removing references to Appendix C found in 40 CFR 82.18

Section 82.18(a) apportions Article 5 allowances for class II substances. Today's action removes the references in that section to Annex 4 of Appendix C and replaces them with references to Appendix E.

Section 82.18(c) addresses "International trades of production allowances, export production allowances and Article 5 allowances." Today's action revises section 82.18(c)(1) to conform to the changes being made to section 82.15(e) concerning trades with parties. In part, the revision removes references to Appendix C. In addition, EPA is removing obsolete references to Appendix L. Appendix L currently relates only to approved critical uses of methyl bromide and has no relationship to international trades.

IV. Updating Appendix E

Appendix E contains a list of countries operating under Article 5 of the Montreal Protocol. EPA last updated this appendix on December 15, 2009. South Sudan became a Party to the Protocol in January 2012 and ratified all four amendments in October 2012. South Sudan is listed on the Ozone Secretariat's website as having a temporary categorization as an Article 5 country pending submission of ODS consumption data. EPA is adding it to Appendix E with a footnote indicating this contingency. Per Decision XXV/16, Croatia has changed its status under

the Montreal Protocol and is no longer an Article 5 country. Therefore, today's action removes Croatia from Appendix E. Other minor updates to Appendix E include referring to Bolivia as "Bolivia (Plurinational State of)", Moldova as "Moldova (Republic of)", Libya as "Libya" as opposed to Libya (Arab Jamahiriya) and Venezuela as "Venezuela (Bolivarian Republic of)." These changes harmonize Appendix E with the list available on the Ozone Secretariat's website. While a valuable reference, the list in Appendix E can become outdated as changes occur to the list maintained by the Ozone Secretariat. Therefore, in addition to updating the list, today's action revises Appendix E to advise readers to consult the Ozone Secretariat's website for updates: http://ozone.unep.org/new_site/en/parties_under_article5_para1.php.

V. Updating commodity codes for ozone-depleting substances

The international Harmonized System, administered by the World Customs Organization, is the global system of nomenclature that is used to describe most world trade in goods. The U.S. International Trade Commission is responsible for publishing the Harmonized Tariff Schedule of the United States Annotated (HTS).³ The HTS provides the applicable tariff rates and statistical categories for all merchandise imported into the United States.

In 1998, EPA began requiring that importers of controlled substances use specific HTS codes listed in Appendix K of subpart A to 40 CFR part 82 (63 FR 41638, August 4, 1998). For class II substances, the relevant reporting and recordkeeping requirements appear at sections 82.24(c)(1)(iii) and 82.24(c)(2)(viii), respectively. U.S. Customs and Border Protection regulations require importers to properly identify the contents of a shipment, including the use of a proper commodity code from the HTS. EPA's rationale for requiring importers of ODS to include specific commodity codes in their part 82 recordkeeping and reporting was to improve

³ The most recent version of the Harmonized Tariff Schedule of the United States Annotated can be found at: <http://www.usitc.gov/tata/hts/index.htm>

compliance with stratospheric ozone protection regulations. EPA is able to crosscheck and monitor the entry data collected by Customs and compare it to the import data reported to EPA. Proper use of commodity codes from the current HTS continues to be important for EPA to monitor compliance.

Revisions made in 2012 affected the commodity codes for ozone depleting substances, which are found in Chapter 29 of the HTS. A Change Record listing the changes made in 2012 is available in the docket. Today's action revises the commodity codes for ODS in Appendix K of Subpart A to reflect the relevant changes to the HTS. EPA is also taking this opportunity to organize the list of ODS by class I and class II for ease of reference.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose any new information collection burden. EPA already requires recordkeeping and reporting for ozone-depleting substances and this action does not amend those provisions. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 82, subpart A under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060-0498. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

We have considered the economic impacts of this rule on small entities. For purposes of assessing the impacts of this rule on small entities, a small entity is defined as: (1) a small business that is primarily engaged in industrial gas manufacturing as defined by NAICS codes 325120 with fewer than 1000 employees or engaged in wholesale of those gases as defined by NAICS codes 424620 with fewer than 100 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The only provision of today's rule that has the potential to affect small entities is the update to the HCFC trade ban prohibiting the import or export of HCFCs to three countries. Based on data reported to EPA, there are fewer than half a dozen companies that have exported to these countries in the last few years and none are small businesses.

Although this direct final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule

on small entities. In 2013 and 2014, EPA sent a letter to all importers and exporters notifying them of the trade ban provisions in the Montreal Protocol.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for State, local, or tribal governments or the private sector. UMRA does not apply to rules that are necessary for the national security or the ratification or implementation of international treaty obligations. This rule updates the regulations to reflect the provisions of the Montreal Protocol related to trade with non-Parties. Other changes in this rule are to improve the accuracy and consistency of the regulations and have no to little impact on the regulated community. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Potentially affected entities are not government entities but rather producers, importers, and exporters of HCFCs.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Potentially affected entities are not government entities but rather producers, importers, and exporters of HCFCs. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action does not significantly or uniquely affect the communities of Indian tribal governments. It does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it implements specific trade provisions already agreed upon and in effect under an international treaty.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and

applicable voluntary consensus standards. This action does not involve technical standards.

Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629, Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the U.S.

EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This action updates regulatory provisions related to the HCFC trade ban: the effect is to prohibit export of HCFCs to a small list of countries that are not Party to the Beijing Amendment to the Montreal Protocol.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the

U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5

U.S.C. 804(2). This rule will be effective **[INSERT DATE 90 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Exports, Hydrochlorofluorocarbons, Imports.

Dated: March 7, 2014.

Gina McCarthy,
Administrator.

For the reasons stated in the preamble, 40 CFR Part 82 is amended as follows:

PART 82- PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671– 7671q.

2. Amend § 82.3 by:

- a. Removing the definition of “Complying with the Protocol”;
- b. Adding the definition of “Foreign state complying with”;
- c. Revising the definition of “Foreign state not Party to or Non-Party”;
- d. Removing the definition of “Nations complying with, but not joining, the Protocol”; and
- e. Revising the definition of “Party”;

The revised and added text reads as follows:

§ 82.3 Definitions for class I and class II controlled substances.

* * * * *

Foreign state complying with, when referring to a foreign state not Party to the 1987 Montreal Protocol, the London Amendment, the Copenhagen Amendment, or the Beijing Amendment, means any foreign state that has been determined to be complying with the 1987 Montreal Protocol or the specified amendments by a Meeting of the Parties.

Foreign state not Party to or Non-Party means a foreign state that has not deposited instruments of ratification, acceptance, or other form of approval with the Directorate of the United Nations Secretariat, evidencing the foreign state's ratification of the provisions of the 1987 Montreal Protocol, the London Amendment, the Copenhagen Amendment, or the Beijing Amendment, as specified.

* * * * *

Party means a foreign state that has deposited instruments of ratification, acceptance, or other form of approval with the Directorate of the United Nations Secretariat, evidencing the foreign state's ratification of the provisions of the 1987 Montreal Protocol, the London Amendment, the Copenhagen Amendment, or the Beijing Amendment, as specified. (For ratification status, see: http://ozone.unep.org/new_site/en/treaty_ratification_status.php)

* * * * *

3. Amend § 82.4 by revising paragraphs (1)(1) through (6) to read as follows:

§ 82.4 Prohibitions for class I controlled substances.

* * * * *

(l) Every kilogram of a controlled substance, and every controlled product, imported or exported in contravention of this subpart constitutes a separate violation of this subpart. No person may:

(1) Import or export any quantity of a controlled substance listed in class I, Group I or Group II, in appendix A to this subpart from or to any foreign state not Party to the 1987 Montreal Protocol unless that foreign state is complying with the 1987 Montreal Protocol (For ratification status, see: http://ozone.unep.org/new_site/en/treaty_ratification_status.php);

(2) Import or export any quantity of a controlled substance listed in class I, Group III, Group IV, or Group V, in appendix A to this subpart, from or to any foreign state not Party to the London Amendment, unless that foreign state is complying with the London Amendment (For ratification status, see: http://ozone.unep.org/new_site/en/treaty_ratification_status.php); or

(3) Import a controlled product, as noted in appendix D, annex 1 to this subpart, from any foreign state not Party to the 1987 Montreal Protocol, unless that foreign state is complying with the 1987 Montreal Protocol (For ratification status, see: http://ozone.unep.org/new_site/en/treaty_ratification_status.php).

(4) Import or export any quantity of a controlled substance listed in class I, Group VII, in appendix A to this subpart, from or to any foreign state not Party to the Copenhagen Amendment, unless that foreign state is complying with the Copenhagen Amendment (For ratification status, see: http://ozone.unep.org/new_site/en/treaty_ratification_status.php).

(5) Import or export any quantity of a controlled substance listed in class I, Group VI, in appendix A to this subpart, from or to any foreign state not Party to the Copenhagen Amendment unless that foreign state is complying with the Copenhagen Amendment (For ratification status, see: http://ozone.unep.org/new_site/en/treaty_ratification_status.php).

(6) Import or export any quantity of a controlled substance listed in class I, Group VIII, in appendix A to this subpart, from or to any foreign state not Party to the Beijing Amendment, unless that foreign state is complying with the Beijing Amendment (For ratification status, see: http://ozone.unep.org/new_site/en/treaty_ratification_status.php).

* * * * *

4. Amend § 82.15 by revising paragraphs (c), (e)(1), and (e)(2), and removing paragraph (e)(3) to read as follows:

§ 82.15 Prohibitions for class II controlled substances.

* * * * *

(c) *Production with Article 5 allowances.* No person may introduce into U.S. interstate commerce any class II controlled substance produced with Article 5 allowances, except for export to an Article 5 Party as listed in Appendix E of this subpart. Every kilogram of a class II controlled substance produced with Article 5 allowances that is introduced into interstate commerce other than for export to an Article 5 Party constitutes a separate violation under this subpart. No person may export any class II controlled substance produced with Article 5 allowances to a non-Article 5 Party. Every kilogram of a class II controlled substance that was produced with Article 5 allowances that is exported to a non-Article 5 Party constitutes a separate violation under this subpart.

* * * * *

(e) * * *

(1) A Party to the Beijing Amendment. As of March 14, 2014, the following foreign states had not ratified the Beijing Amendment: Kazakhstan, Libya, and Mauritania. For updates on

ratification status, see the Ozone Secretariat's website at:

http://ozone.unep.org/new_site/en/treaty_ratification_status.php. Or,

(2) A foreign state not party to the Beijing Amendment that is complying with the Beijing Amendment as defined in this subpart.

* * * * *

5. Amend § 82.18 by revising paragraphs (a) and (c)(1) to read as follows:

§ 82.18 Availability of production in addition to baseline production allowances for class II controlled substances.

(a) *Article 5 allowances.* (1) Effective January 1, 2003, a person apportioned baseline production allowances for HCFC-141b, HCFC-22, or HCFC-142b under § 82.17 is also apportioned Article 5 allowances, equal to 15 percent of their baseline production allowances, for the specified HCFC for each control period up until December 31, 2009, to be used for the production of the specified HCFC for export only to foreign states listed in Appendix E to this subpart.

(2) Effective January 1, 2010, a person apportioned baseline production allowances under § 82.17 for HCFC-141b, HCFC-22, or HCFC-142b is also apportioned Article 5 allowances, equal to 10 percent of their baseline production allowances, for the specified HCFC for each control period up until December 31, 2019, to be used for the production of the specified HCFC for export only to foreign states listed in Appendix E to this subpart.

(3) Effective January 1, 2015, a person apportioned baseline production allowances under § 82.17 for HCFC-123, HCFC-124, HCFC-225ca, and HCFC-225cb is also apportioned Article 5 allowances, equal to 10 percent of their baseline production allowances, for the specified HCFC

for each control period up until December 31, 2019, to be used for the production of the specified HCFC for export only to foreign states listed in Appendix E to this subpart.

* * * * *

(c) * * * (1) A person may increase or decrease their production allowances, export production allowances, or Article 5 allowances, for a specified control period through trades with a foreign state that is Party to the Beijing Amendment or is complying with the Beijing Amendment as defined in this subpart. The foreign state must agree either to trade to the person for the current control period some quantity of production that the foreign state is permitted under the Montreal Protocol or to receive from the person for the current control period some quantity of production that the person is permitted under this subpart. The person must expend their consumption allowances allocated under § 82.19, or obtained under § 82.20 in order to produce with the additional production allowances.

* * * * *

**Appendix C to Subpart A of Part 82—Parties to the Montreal Protocol, and Nations
Complying With, But Not Parties to, the Protocol -- [Removed and Reserved]**

6. Remove and reserve Appendix C to Subpart A of Part 82.

7. Revise Appendix E to Subpart A of Part 82 to read as follows:

APPENDIX E TO SUBPART A OF PART 82 – ARTICLE 5 PARTIES

Parties operating under Article 5 of the Montreal Protocol as of **[INSERT DATE OF PUBLICATION IN FEDERAL REGISTER]** are listed below. An updated list can be located at: http://ozone.unep.org/new_site/en/parties_under_article5_para1.php.

Afghanistan, Albania, Algeria, Angola, Antigua & Barbuda, Argentina, Armenia, Bahamas, Bahrain, Bangladesh, Barbados, Belize, Benin, Bhutan, Bolivia (Plurinational State of), Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Congo (Democratic Republic of), Cook Islands, Costa Rica, Côte d'Ivoire, Cuba, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Gabon, Gambia, Georgia, Ghana, Grenada, Guatemala, Guinea, Guinea Bissau, Guyana, Haiti, Honduras, India, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Jordan, Kenya, Kiribati, Korea (Democratic People's Republic of), Korea (Republic of), Kuwait, Kyrgyzstan, Lao (People's Democratic Republic), Lebanon, Lesotho, Liberia, Libya, Madagascar, Malawi, Malaysia, Maldives, Mali, Marshall Islands Mauritania, Mauritius, Mexico, Micronesia (Federal States of), Moldova (Republic of), Mongolia, Montenegro, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, Nicaragua, Niger, Nigeria, Niue, Oman, Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Qatar, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent & the Grenadines, Samoa, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia, Seychelles, Sierra Leone, Singapore, Solomon Islands, Somalia, South Africa, South Sudan*, Sri Lanka, Sudan, Suriname, Swaziland, Syrian Arab Republic, Tanzania (United Republic of), Thailand, The Former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Tuvalu, Uganda, United Arab Emirates, Uruguay, Vanuatu, Venezuela (Bolivarian Republic of), Viet Nam, Yemen, Zambia, Zimbabwe.

*temporarily categorized as Article 5 pending submission of ODS consumption data

8. Revise Appendix K to Subpart A of Part 82 to read as follows:

**APPENDIX K TO SUBPART A OF PART 82 – COMMODITY CODES FROM THE
HARMONIZED TARIFF SCHEDULE FOR CONTROLLED SUBSTANCES AND USED
CONTROLLED SUBSTANCES**

Description of commodity or chemical	Commodity code from harmonized tariff schedule
<i>Class II</i>	
HCFC-22 (Chlorodifluoromethane)	2903.71.0000
HCFC-123 (Dichlorotrifluoroethane)	2903.79.9020
HCFC-124 (Monochlorotetrafluoroethane)	2903.79.9020
HCFC-141b (Dichlorofluoroethane)	2903.73.0000
HCFC-142b (Chlorodifluoroethane)	2903.74.0000
HCFC-225ca, HCFC-225cb (Dichloropentafluoropropanes)	2903.75.0000
HCFC-21, HCFC-31, HCFC-133, and other HCFCs	2903.79.9070
HCFC Mixtures (R-401A, R-402A, etc.)	3824.74.0000
<i>Class I</i>	
CFC-11 (Trichlorofluoromethane)	2903.77.0010
CFC-12 (Dichlorodifluoromethane)	2903.77.0050
CFC-113 (Trichlorotrifluoroethane)	2903.77.0020
CFC-114 (Dichlorotetrafluoroethane)	2903.77.0030
CFC-115 (Monochloropentafluoroethane)	2903.77.0040
CFC-13, CFC-111, CFC-112, CFC-211, CFC-212, CFC-213, CFC-214, CFC-215, CFC-216, CFC-217, and other CFCs	2903.77.0080
CFC Mixtures (R-500, R-502, etc.)	3824.71.0100
Carbon Tetrachloride	2903.14.0000
Halon 1301 (Bromotrifluoromethane)	2903.76.0010
Halon, other	2903.76.0050
Methyl Bromide	2903.39.1520
Methyl Chloroform	2903.19.6010

[FR Doc. 2014-05818 Filed 03/25/2014 at 8:45 am; Publication Date: 03/26/2014]